

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date:
March 23, 2016

Legend

Settlor
Spouse
Year 1
Year 2
Date 1
Date 2
Date 3
Date 4
Trust 1
Trust 2
LP
Corporation
a
b
c
d

Dear :

This letter responds to your authorized representative's letter dated August 24, 2015, requesting a ruling that the automatic allocation rules under § 2632(c) of the Internal Revenue Code apply to the transfers made by Settlor and Spouse in Year 1 and Year 2.

The facts and representations submitted are as follows:

On Date 1, in Year 1 (a date after December 31, 2000), Settlor established Trust 1 and Trust 2. It is represented that Trust 1 and Trust 2 are trusts within the meaning of § 2632(c)(3)(B).

Paragraph 4 of each trust provides, in relevant part, that after the deaths of Settlor and Spouse, the trustees are to apportion the remaining trust fund into equal trust shares as follows: one such equal trust share to be allocated to each of the then living children of Settlor and one such equal trust share to be allocated to the family group composed of the then living issue of any child of Settlor who is then deceased. In the case of each trust share allocated to a living child of Settlor, the trustees are to make distributions of income and principal to the beneficiary and the living issue of such beneficiary as trustees determine in their sole and complete discretion.

On Date 1, Settlor transferred an a percent interest in LP, a limited partnership, to Trust 1, and b shares of non-voting common stock of Corporation to Trust 2.

On Date 2, in Year 1, Settlor transferred c shares of non-voting common stock of Corporation to Trust 2. On Date 3, in Year 1, Settlor transferred a d percent interest in LP to Trust 1. On Date 4, in Year 2, Settlor transferred several promissory notes to Trust 1.

Settlor and Spouse retained tax professionals to prepare their Year 1 and Year 2 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. On the Year 1 Forms 709, Settlor and Spouse consented, under § 2513, to treat the gifts made by each in Year 1 as made by both of them. The Year 1 Forms 709 were timely filed. The Year 1 transfers to Trust 1 and Trust 2 were incorrectly reported on Forms 709, Schedule A, Part 1-Gifts Subject Only to Gift Tax instead of Schedule A, Part 3-Indirect Skips. Furthermore, the automatic allocation of the GST exemption was not reported on Schedule C.

On Settlor's Year 2 Form 709, the Year 2 transfers to Trust 1 were incorrectly reported on Form 709, Schedule A, Part 1-Gifts Subject Only to Gift Tax instead of Schedule A, Part 3-Indirect Skips. Furthermore, the automatic allocation of the GST exemption was not reported on Schedule C. Schedule D did not reflect that any current or previous GST exemption had been allocated to any current or previous transfer, including the Year 1 transfers.

You have requested the following rulings:

1. Settlor's available GST exemption was automatically allocated to the Year 1 transfers to Trust 1 and Trust 2.
2. Spouse's available GST exemption was automatically allocated to the Year 1 transfers to Trust 1 and Trust 2.

3. Settlor's available GST exemption was automatically allocated to the Year 2 transfers to Trust 1.

LAW AND ANALYSIS

Rulings 1-3

Section 2513(a) provides, generally, that if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor and one-half by the donor's spouse.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust. Section 2632(c)(3)(B) provides, in relevant part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust falls within any of six enumerated exceptions.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides, in relevant part, that an indirect skip is a transfer of property to a GST trust as defined in § 2632(c)(3)(B) provided that the transfer is subject to gift tax and does not qualify as a direct skip. In the case of an indirect skip made after December 31, 2000, to which § 2642(f) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). The automatic allocation is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made.

In this case, the terms of Trust 1 and Trust 2 satisfy the definition of a GST trust under § 2632(c)(3)(B). Therefore, the transfers that Settlor and Spouse made to Trust 1 and Trust 2 in Year 1 and the transfers that Settlor made to Trust 1 in Year 2 satisfy the definition of indirect skips under § 2632(c)(3)(A) and § 26.2632-1(b)(2)(i). Pursuant to § 2632(c)(1), the GST exemption of Settlor and Spouse was automatically allocated to the transfers that they made to Trust 1 and Trust 2 in Year 1 and Year 2. Accordingly, based upon the facts submitted and the representations made, we conclude that:

1. Settlor's available GST exemption was automatically allocated to the Year 1 transfers to Trust 1 and Trust 2.
2. Spouse's available GST exemption was automatically allocated to the Year 1 transfers to Trust 1 and Trust 2.
3. Settlor's available GST exemption was automatically allocated to the Year 2 transfers to Trust 1.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: